

NTSB Order No. EA-4829

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 25th day of February, 2000

Respondent .

Docket SE-15517

Respondent has appealed from the order the law judge served in this proceeding on April 29, 1999, granting summary judgment for the Administrator on the issue of the appropriate sanction to be imposed on a complaint alleging that respondent had been convicted of a felony drug charge.<sup>1</sup> The law judge agreed with

<sup>1</sup>A copy of the law judge's order is attached. Although the respondent has not raised the issue, we note that the law judge ruled on the Administrator's motion for summary judgment before the respondent's time for answering it had expired. Apart from the potential for inefficiency and confusion such precipitous action produces, given the possibility that the Board may have to

the Administrator that revocation of respondent's airman certificates, including Private Pilot Certificate No. 526903269, was the correct sanction under the terms of Federal Aviation Regulation (FAR) section 61.15(a)(2), 14 C.F.R. Part 61.<sup>2</sup> We will deny the appeal, to which the Administrator filed a reply in opposition.

On appeal, respondent asks only that the Board impose a one-year suspension of his airman certificate, rather than the revocation ordered by the Administrator. In support of this request, respondent urges the Board to consider a variety of circumstances demonstrating that he has reformed his ways since the time of his conviction and that, in effect, he can now be trusted to abide by requirements applicable to certificate holders. Respondent's position is unavailing.

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consider in the first instance on appeal arguments in an answer that should have been resolved when the law judge still had jurisdiction, we have difficulty envisioning the circumstances that might justify the appearance of prejudgment that a ruling entered before all parties have been heard from creates.

<sup>2</sup>FAR section 61.15(a)(2) provides as follows:

**§61.15 Offenses involving alcohol or drugs.**

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for—

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(2) Suspension or revocation of any certificate or rating issued under this part.

The respondent admitted the factual allegations on which the revocation order was based, namely, that he had been convicted in federal district court, on a guilty plea, of conspiracy to manufacture a mixture or substance containing marijuana, under 21

While we have no reason to doubt the truth of respondent's account of his life following the conduct that gave rise to this matter, the issue before us is not whether we agree with the Administrator's determination of the appropriate sanction, but whether the sanction sought by the Administrator is one to which we owe our deference. On that score, respondent has identified no basis for concluding that revocation for the commercial drug activity for which he was convicted is arbitrary, capricious or otherwise not in accordance with law. See 49 U.S.C. § 44709(d)(3). To the contrary, revocation is specifically authorized under FAR section 61.15, and the Board, as the law judge recognized, has repeatedly affirmed it in cases of this kind. See Administrator v. Piro, NTSB Order No. EA-4049 (1993).

In sum, without some showing that revocation is inconsistent with sanctions applied by us in cases predicated on similar drug convictions, the factors respondent believes justify a lesser sanction have no decisional bearing here. At the same time, however, they are, we assume, factors that the Administrator will weigh in considering any reapplication for a certificate that respondent might choose to submit when he is eligible to do so.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied; and
2. The order of the law judge is affirmed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

